

October 31, 2017

SENT BY ELECTRONIC MAIL AND U.S. MAIL

The Honorable John Leopold, Chair
Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060
john.leopold@santacruzcounty.us

**Re: Recommended Changes To The Proposed Commercial Cultivation of
Medical Cannabis Licensing Program**

Dear Chair Leopold and Boardmembers:

Our office represents VMK, Inc. d/b/a/ Purple Lotus Patient Center (“Purple Lotus”) regarding Santa Cruz County’s proposed new Commercial Cultivation of Medical Cannabis licensing program (“Proposed Ordinance”). (Santa Cruz County Code, Chapter 7.128.) As you are aware, the County is currently seeking comments on the Draft Environmental Impact Report (“DEIR”) in support of the Proposed Ordinance. The following recommended changes to the Proposed Ordinance are intended to outline an alternative which balances the economic benefits of the “More Permissive Project,” with similar or fewer environmental impacts than the “Project.”

I. Increased Canopy Coverage Allowed Per Acre – Retain Maximum Limit

The Proposed Ordinance establishes a canopy coverage limit based upon the size of the parcel (currently 2% of the size of the parcel), while setting a maximum canopy size allowed no matter the acreage of the subject parcel. (Section 7.128.110(F)(1)(b).) Undoubtedly, this size limitation is intended to address potential land use and environmental impacts from large cultivation operations on nearby properties. However, despite the substantial differences in potential land use and environmental impacts that could result from outdoor and indoor cultivation operations, the Proposed Ordinance does not distinguish between the two types of operations. We recommend the inclusion of an increased canopy coverage limit that recognizes these differences.

Including an increased canopy coverage limit for indoor cultivation operations provides several benefits:

1. Indoor operations can reduce potential impacts from wastewater and stormwater discharge;
2. Indoor operations enhance safety by making it easier to control access and provide security at the facility;
3. Noise and odors from cultivation operations are more easily controlled through site control and air filtration systems;
4. Indoor operations can eliminate visibility of cultivation operations from public rights-of-way, as well as from neighboring parcels; and
5. Encourage indoor cultivation operations where feasible, which promotes the reduction of potential impacts described above, without mandating any particular type of cultivation operation.

To address these issues, we recommend revising the subparagraph for each license type which establishes the per-acre canopy coverage limit with separate limits for indoor and outdoor operations, while retaining the maximum canopy coverage size. For example, the “Class CA Licenses” type would be modified as follows:

“(b) Size of canopy allowed, subject to approval of the Licensing Official: up to 2 percent of the size of the parcel containing ~~the~~ ***an outdoor*** cultivation site, *and up to [X] percent of the size of the parcel containing an indoor cultivation site*, not to exceed twenty-two thousand (22,000) square feet.”

Given the maximum canopy coverage limit would remain the same, we recommend “X” to be at least five (5) percent of the size of the parcel.

II. Reduced Right-of-Way Setbacks For Indoor Cultivation

The Proposed Ordinance establishes a minimum setback requirement from a public right-of-way of one hundred to three hundred feet, depending upon the size of the parcel. (Sections 7.128.110(G)(3)(c)-(e).) While arguably necessary to avoid potential impacts from outdoor cultivation operations, such as odors, visibility and security, such large setbacks are not necessary for indoor cultivation operations to avoid these potential land use and environmental impacts. As stated above, indoor cultivation operations can: (1) use air filtration systems to address odor; (2) eliminate visibility of operations whether 25 feet away or 1,000 feet away; and (3) control access and enhance security of the site. Thus, we recommend setting no more than a 50-foot setback from public rights-of-way for all parcel sizes for indoor cultivation operations.

III. Provide Guidance To Licensing Official When Allowing Exceptions To Setback Requirements

The Proposed Ordinance gives broad discretion to the Licensing Official to approve an exception to the setback requirements (except for the setback from schools under State law). (Section 7.128.110(G)(3)(k).) In our experience, staff delegated authority is most successful when guidance from the legislative body is established for the Licensing Official when making such decisions. We recommend adding the following to this section:

“(k) Exceptions. With respect to all setbacks other than the 600 foot setback imposed by State law regarding schools, the Licensing Official has discretion to allow for exceptions to the rules set forth herein for setbacks. If the Licensing Official is prepared to authorize such an exception, the Licensing Official must first require owners and occupants of all parcels within at least 300 feet of the parcel at issue to be notified and given an opportunity to be heard in a public forum before making a decision. When determining whether to allow an exception to the setback requirements, the Licensing Official shall consider the following:

- (i) Whether any land use or environmental impacts would increase as a result of the reduction which cannot be addressed by project conditions of approval;
- (ii) Whether the proposed cultivation site will be located within a building that was permitted and constructed prior to the adoption of this ordinance; and
- (iii) Whether the property’s size, shape, topography, location, or surroundings would support the need for a setback reduction.”

IV. Conclusion

Thank you for considering these recommended changes as part of your deliberation of the Proposed Ordinance. Purple Lotus appreciates your willingness to work with all parties involved, including the residents of Santa Cruz County, to develop a program that will work for all involved and minimize impacts on the community.

Chair John Leopold
County of Santa Cruz
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If you have any questions, please do not hesitate to reach me at dcucchi@aklandlaw.com
or (916) 456-9595.

Sincerely,



Daniel S. Cucchi

DSC/pa

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